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REVIEW OF FURTHER DEVELOPMENTS IN FIELDS WITH WHICH THE SUB-COMMISSION HAS BEEN CONCERNED

IMPLICATIONS OF HUMANITARIAN ACTIVITIES FOR THE ENJOYMENT OF HUMAN RIGHTS

Preparatory document submitted by Mrs. Claire Palley on the question of the role of the United Nations in international humanitarian activities and assistance and human rights enforcement, bearing in mind the principle of non-interference

Background

1. Events since the Gulf war have highlighted the evolving role of the United Nations in providing and coordinating international humanitarian assistance. Traditional assumptions about the character and limits of international rights and responsibilities in this field are rapidly being challenged and redefined in practice. This may have serious implications for the future programme of work of the United Nations in the field of human rights, and is therefore an appropriate topic for consideration by the Sub-Commission.

2. These recent developments will inevitably affect the understanding and interpretation of Article 55 of the Charter, with respect to the right and duties of States to cooperate with one another in solving problems of an economic, social, cultural or humanitarian character. The underlying idea of

"cooperation" has, according to one view of the matter, taken on a more mandatory character, imposing on wealthy States a duty to provide resources for the realization of economic, social and cultural rights within States that lack their own means for achieving these rights. While still a matter of controversy in the field of human rights, this view has attracted wider support in the context of "sustainable development".

3. According to another view, "cooperation" also imposes specific duties on recipient States as regards the facilitation of relief efforts and other forms of assistance. General Assembly resolutions 43/131 and 45/100 (among others) suggest that the recipient State and its negotiators have a duty to facilitate the delivery of international aid in the event of a natural disaster or similar emergency. Security Council resolution 688 (1991), referring to the Kurds of Iraq, can moreover be interpreted as implying a duty on the part of the State affected to accept the assistance offered. This aspect needs clarification. While the Security Council expressly based this resolution on the existence of a threat to international peace and security, it also referred to a pattern of grave violations of human rights. More recently, the Security Council has relied on reports of special sessions of the Commission on the former Yugoslavia, and referred to the reports of a Special Rapporteur of the Commission.

4. Similar issues may arise with respect to withholding of assistance. In recent years it has been argued that human rights situations may be invoked as a justification for new kinds of "conditionality" affecting States' access to international resources. This possibility received widespread attention following the publication by the United Nations Development Programme, in its Human Development Report 1991, of a list of States ranked according to a so-called "human freedom index". UNDP subsequently suspended its use of this ranking system, and its newly-appointed Administrator suggested that he would oppose "conditionality" based on human rights performance. He indicated, none the less, that UNDP might use human rights criteria to determine whether future assistance should be provided through Governments, or directly to vulnerable social groups.

5. The Secretary-General, in his report on the work of the Organization to the General Assembly at its forty-sixth session, and in his report, An Agenda for Peace, has proposed a more activist role for the United Nations in situations of internal conflict and/or gross violations of human rights which may develop into threats to international security. He stressed the need for objectivity and non-selectivity in such matters, but has yet to propose any mechanisms, other than political deliberations in the Security Council, to ensure that these standards are maintained. It should likewise be noted that the Vienna Declaration and Programme of Action reaffirmed the need for universality, impartiality and non-selectivity in the application of human rights standards.

Issues and concerns

6. Patterns of human rights violations are increasingly being advanced as justification for various forms of economic and military "interventions". The propriety and limits of such actions, whether genuinely multilateral or simply sanctioned by the United Nations, have yet to be analysed explicitly and

systematically by any United Nations bodies. International conduct is being guided by practice, rather than principles. Different organs, bodies and agencies of the United Nations are evolving their own understandings of the role of the United Nations in these situations, and of the limitations of its competence.

7. Recent developments in Somalia and Bosnia and Herzegovina demonstrate the potential adverse effects of an ad hoc approach to humanitarian action. In Somalia, United Nations peace-keeping forces reacted disproportionately to attacks by local militias, resulting in many civilian casualties, while in Bosnia United Nations forces failed to protect the lives of State officials in their custody, or to defend the "safe havens" for refugees declared by the Security Council. There is evidently a lack of consistence or clarity in the mission, mandate and "rules of engagement" of current humanitarian interventions, leading to a widespread perception that the United Nations is ineffective and selective.

8. The situation of the Kurds and the Marsh Arabs in Iraq is particularly illustrative of the growing appearance that such activities are ad hoc and selective in character. Although a United Nations-sponsored military coalition fostered the emergence of a de facto Kurdish State in northern Iraq, the United Nations has not responded to threats to the Kurdish populations of neighbouring countries. Nor has it responded to protect the Marsh Arabs within Iraq. The credibility, and effectiveness, of the United Nations is severely tested when the same group is protected in certain States but not in others. It is even more questionable when there is intervention to protect one group in a State and not another in the same State which is being subjected to grave human rights violations.

9. The appearance of selectivity weakens the effectiveness of the United Nations as an international organization. It not only tends to expose United Nations missions and staff members to greater risks in countries where their work is urgently needed, but reduces governmental and non-governmental cooperation with the United Nations in many countries, and potentially undermines the effectiveness of United Nations human rights and development activities. Peace-keeping and/or "humanitarian" operations which are perceived as selective and disproportionate, or as extensions of the foreign policies of particular States rather than of the international community as a whole, could also jeopardize the Organization's ability to conduct preventive activities, such as technical cooperation and financing of democratic development in developing and "transitional" countries.

10. There will continue to be exceptional situations in which collective action by the international community may be necessary, as in situations where State institutions have disintegrated completely, and the United Nations must maintain public order and assume transitional control of essential services, or where violations of human rights are on such a scale that enforcement of fundamental human rights standards is broadly supported (such as unambiguous cases of genocide). At the present time, however, there is a critical lack of guidelines and mechanisms to ensure that such action is only taken on the basis of an objective, collective assessment of the situation, which preserves the integrity and credibility of the Charter.

11. Complexities and ambiguities in the terminology and concepts involved in the field of humanitarian assistance are rapidly appearing in practice, resulting in a sense of insecurity among many States. Clarification is now urgently needed, to protect the emerging consensus on humanitarian assistance by reaffirming that unilateral intervention by States or groups of States continues to be unlawful and that nineteenth century concepts of intervention by great Powers will not be resurrected under another name. A stronger coordinating role of the United Nations, and a stronger scheme of State rights and responsibilities with respect to humanitarian issues, should enhance, rather than undermine, the principles of sovereign equality and collective security under the Charter. At the same time, the activity of the Security Council may require greater transparency and participation by Member States.

12. There is also a need to examine the relationship between humanitarian law and standards of international human rights law. Both of these fields of international law are routinely invoked simultaneously by United Nations organs such as the Security Council. They are not integrated conceptually or coordinated administratively, however, although both flow historically from the same sources. Their relationship needs careful thinking and study to give the policy organs of the United Nations a firm legal and conceptual basis for future international action. Ideally, humanitarian law and human rights should be complementary and mutually reinforcing, rather than being separate conceptual and administrative domains.

13. An emerging issue, with even more far-reaching implications, is the legitimate scope of the right of States to self-defence and of their right to call upon the United Nations to legitimize such actions. The difference between national security and collective security is being blurred by some recent actions.

Recommendations

14. In view of the urgency and complexity of this topic, it is recommended that a study be undertaken. This will enable the Sub-Commission to make a useful contribution to other organs and bodies of the United Nations in this field. The relevance, timeliness, object and general outlines of the study will have been made apparent in the previous paragraphs.

15. Inter alia, the study would cover the following topics which would be interrelated:

1. The principle of non-intervention, its scope and applicability;

2. The history of humanitarian intervention to date;

3. The development of the concept of humanitarian assistance;

4. The concept of assistance in the human rights sphere and in particular in relation to economic, social and cultural rights and practices of conditionality;

5. Human rights enforcement, including where appropriate, peace-keeping and peacemaking;

6. The monopoly of force by the United Nations, except for legitimate cases of self-defence under Article 51 of the Charter of the United Nations and Chapter VIII on regional arrangements for the maintenance of international peace and security;

7. The relationship between humanitarian and human rights law;

8. Whether the United Nations system and the currently responsible specialized organs are able effectively to provide humanitarian assistance to those in need and to ensure promotion and protection of human rights;

9. Possible modalities for facilitating the work of the United Nations.

16. The study should pay particular attention to the evolving interpretation of Article 55 of the Charter. Attention should also be given to the significance of Articles 1 and 56 of the Charter, the Declaration of Principles on Friendly Relations Among States in accordance with the Charter of the United Nations and the Vienna Declaration and Programme of Action of the World Conference on Human Rights, as well as to the provisions of international humanitarian and human rights instruments relating to the rights and duties of States in matters of international cooperation.

Timetable

17. So far as a draft timetable is concerned, it is proposed that a preliminary but substantial report be submitted to the Sub-Commission at its forty-sixth session. This will then be the subject of analysis and criticism by the Sub-Commission and Governments, enabling the formulation of further detailed guidelines and issues upon which there should be concentration. At the forty-seventh session a progress (the second) report should be presented, concentrating on the basic issues which will have emerged. The final report should be submitted to the Sub-Commission at its forty-eighth session.